



# BRINGING FULLY COMPETITIVE BROADBAND TO AMERICA<sup>1</sup>

**FILED ELECTRONICALLY**

April 16, 2008

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* Presentations in MB Docket No. 07-198.

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The Broadband Service Providers Association (BSPA) submits this notice of an *ex parte* presentation in the above-captioned proceedings.

On April 15, 2008, I had a meeting on behalf of the Broadband Service Providers Association (BSPA) with Elizabeth Andrión, Legal Advisor to Chairman Martin to discuss the Commission's rulemaking on Program Access Rules and Examination of Programming Tying Arrangements.

At this meeting we discussed the policy recommendations made by the BSPA and its members as part of comments filed in MB docket No. 07-198. These topics included our recommendation that rather than immediately adopting regulations on tying and bundling, the FCC convene a special staff to study carriage issues and programming practices, including the tying and bundling of programming, requirements related to the placement of programming on a particular tier, and evolving industry structure. We also discussed our recommendations for access to live sports programming. A copy of the meeting discussion points is attached as reference.

Respectfully submitted for,

**Broadband Service Providers Association**

By: /s/  
John Goodman, Executive Director,  
BSPA  
1601 K Street NW  
Washington, D.C. 20006

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<sup>1</sup> The current members of BSPA, all of which are last-mile, facilities-based providers, are: Everest Connections, Hiawatha Broadband, Knology, RCN, and SureWest Communications. BSPA is located at 1601 K Street NW, Washington, DC 20006. Phone: 202.661.3945

(202) 661-3945

1 Enclosure

cc: Elizabeth Andrion

Broadband Service Providers Association (BSPA)  
Discussion Outline - FCC Proceeding 07-198  
Elizabeth Andrion – April 15, 2008

The BSPA has proposed several FCC actions in its filed Comments and Reply Comments in the 07-198 proceeding. In some instances these policy positions and proposals were unique to the BSPA.

1. Proposal for FCC Sponsored Analysis of Carriage in All-digital Networks.
  - a. The scope of current analysis has inherent limits or bias.
    - i. Current submitted economic analysis is all sponsored by the broadcast segment of the industry.
    - ii. None of the analysis centers on the new realities of all-digital networks.
    - iii. Significant amount tied to 2004 a-la-carte proceeding.
  - b. New carriage policies should be enacted in the context of all-digital networks.
  - c. History of significant FCC studies.
  - d. Request that the FCC immediately open a proceeding to initiate the study with the goal of completion in 12 months.
  - e. This action could be based on Section 403 or a congressional request.
2. Proposals for Sports Programming
  - a. We assume that access to cable affiliated sports programming will be covered by closing the terrestrial loophole.
  - b. All other sports programming still have two major issues.
    - i. Assured access. (NFL Sunday Ticket)
    - ii. Restrictive carriage requirements. (NFL Network)
      1. Forced carriage limits other options.
      2. Major impact on cable pricing.
  - c. BSPA Sports Policy Objectives
    - i. No live sports exclusives for any MVPD.
    - ii. The freedom to always offer sports programming for standalone purchase.
  - d. Opportunity for further evaluation as part of the proposed FCC carriage study.

3. Professional Sports Leagues and the Antitrust Exemption

- a. It should be noted that the Anti-trust exemption does not apply to NFL Sunday Ticket or NFL Network.
- b. We do not advocate repeal of the antitrust exemption.
- c. We do advocate that the carriage conditions related to the antitrust exemption be updated to today's realities.
  - i. The original rules have not been updated since the 1960s.
  - ii. The original rules did not provide for any forms of MVPD exclusives. Broadcasters with game rights were available to all fans and then all cable or satellite operators.
  - iii. Rules need to be updated and expanded to account for the multiple competing MVPDs and the digital carriage (Std. and HD) we have now and expect to expand in 2009.
- d. Options to update antitrust carriage rules.
  - i. The FCC determines that it has the authority to do this now.
  - ii. The FCC asks for authority to do this from Congress.
  - iii. Congress takes on this responsibility by passing an amendment to the antitrust law that:
    - 1. Expands coverage of the antitrust exemption.
    - 2. Gives authority to the FCC to determine carriage rules.
    - 3. Specifies carriage rules.